

Memorandum

TAB 31

To: Chair and Commissioners

Date: October 12, 2009

From: 
Bimla G. Rhinehart,
Executive Director

Reference Number 2.4b
Action

Ref: Resolution of Necessity C-20203 - Daniel Forge, Trustee, etc., et al. LA-1

Issue: A number of newspaper articles (mainly in the Malibu Times) have appeared in the past few weeks in regard to a Caltrans Solstice Creek project on State Route 1 and the need for a permanent drainage easement and a temporary construction easement within the creek bed that runs through Mr. Daniel Forge's property. Solstice Creek is on one side of the Forge property the rest of the property is taken up by the BeauRivage restaurant and associated parking. Commission staff has investigated the reason and purpose of the Caltrans Solstice Creek project and is providing the following background and facts for Commission consideration.

Recommendation: Staff recommends that the Commission approve Resolution of Necessity C-20203 – Daniel Forge, Trustee, etc., et al.

Background: In 1999 a Caltrans contractor working on a State Route 33 bridge project over Tule Creek in Ventura County killed steelhead trout (an endangered species) during construction operations before an "inadvertent take" permit was secured. The National Oceanic and Atmospheric Administration (NOAA) was ready to file civil and criminal court actions against Caltrans under Section 9 of the Endangered Species Act (ESA). Since, NOAA had and in fact still has clear evidence of the ESA violations (dead steelhead trout on ice taken from the construction site) defense against the charges would have been problematic for Caltrans.

Caltrans estimated that the civil fines alone would have exceeded \$500,000 and Caltrans and contractor employees could have received jail time if found to be criminally negligent during court proceedings (a good possibility since construction activity and fish kill started before appropriate permits were secured). In addition, these ESA violations created an adverse relationship between Caltrans and NOAA, leading to costly delays in issuance of permits or approvals on all Caltrans projects involving endangered species. The costs associated with litigation, penalties, staff time, and endangered species permit delays on subsequent projects could have run into the millions of dollars.

Faced with these unpleasant facts Caltrans in 2003 entered into an Administrative Settlement Agreement (ASA) with NOAA (Case # SW990255A). The ASA required Caltrans to participate in the joint federal/state/local "Solstice Creek Fish Passage and Riparian Restoration Project." The Solstice Creek Fish Passage Project proposes to eliminate or modify steelhead trout migration barriers and restore habitat for the southern steelhead. Barrier number one on Solstice Creek is the Caltrans culvert on State Route 1 also known as the Pacific Coast Highway (PCH).

The Caltrans project (approximate construction cost \$935,000) will create a rock weir step pools system to allow steelhead trout to migrate up Solstice Creek through the PCH culvert. Caltrans will remove the culvert's bottom slab, excavate within the culvert to provide a rough channel and appropriate water depth and velocity for fish passage. The rock weir step pools system will begin approximately 40 meters upstream of the culvert inlet and continue for 35 meters after the culvert outlet to just above ocean mean high tide elevation.

Caltrans needs a permanent drainage easement and a temporary construction easement to build the 40 meter upstream portion of the rock weir step pools system on Mr. Forge's property. All construction will be done within the creek bed and will not impact Mr. Forge's BeauRivage restaurant or parking area.

As a point of historical note and context, Caltrans in 1949 replaced an old bridge on the PCH over Solstice Creek with the above referenced culvert, thus permanently blocking steelhead trout from migrating upstream to spawning and rearing habitat.

The city of Malibu has retrofitted for fish passage its Corral Canyon Road culvert directly upstream from the Caltrans PCH culvert at a cost of \$1 million. Also, the National Park Service has spent an additional half a million dollars removing upstream barriers to steelhead trout migration within the Santa Monica National Recreation Area. These projects and the funds expended on them would be for not if the Caltrans PCH culvert is not rectified.